

U.S. Department of Labor

Office of Administrative Law Judges
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DATE: AUGUST 3, 2000

CASE NO.: 2000-BLA-121

In the Matter of:

WILLIAM D. LONG
Claimant

v.

U. S. STEEL MINING COMPANY
Employer

and

DIRECTOR, OFFICE OF WORKERS'
COMPENSATION PROGRAMS
Party in Interest

APPEARANCES:

Robert F. Cohen, Jr., Esq.
For the Claimant

Howard G. Salisbury, Jr., Esq.
For the Employer

Before: DANIEL L. LELAND
Administrative Law Judge

DECISION AND ORDER - AWARDING BENEFITS

This proceeding arises from a claim for benefits under the Black Lung Benefits Act, 30 U.S.C. § 901 *et seq.* In accordance with the Act and the pertinent regulations, this case was referred to the Office of Administrative Law Judges by the Director, Office of Workers' Compensation Programs for a formal hearing.

Benefits under the Act are awarded to persons who are totally disabled within the meaning of the Act due to pneumoconiosis or to the survivors of persons whose death was caused by pneumoconiosis. Pneumoconiosis is a dust disease of the lungs arising from coal mine employment and is commonly known as black lung.

A formal hearing was held in Morgantown, West Virginia on May 16, 2000 at which all parties were afforded full opportunity to present evidence and argument, as provided in the Act and the regulations found in Title 20 Code of Federal Regulations. Regulation section numbers mentioned in this Decision and Order refer to sections of that Title. At the hearing, Director's exhibits (DX) 1-30, claimant's exhibits (CX) 1-15, and employer's exhibits (EX) 1-6 were admitted into evidence. Both parties filed post hearing briefs.

ISSUES

- I. Existence of pneumoconiosis
- II. Causal relationship of pneumoconiosis and coal mine employment.
- II. Existence of total disability.
- IV. Causation of total disability.

FINDINGS OF FACT AND CONCLUSIONS OF LAW¹

Procedural History

William D. Long (claimant or miner) filed a claim for benefits under the Act on March 24, 1999. (DX 1) He was initially found entitled to benefits on May 28, 1999, and the district director affirmed this finding on September 22, 1999. (DX 18, 21) After the employer requested a hearing, the case was referred to the Office of Administrative Law Judges on November 8, 1999. (DX 30)

Background

Claimant was born on December 23, 1944 and his only dependent is his wife, Sandra, whom he married on May 22, 1991. (DX 1, 9) The parties have stipulated that claimant was employed as a coal miner for fifteen years. Claimant testified that he worked for U. S. Steel Mining Company from

¹ The following abbreviations have been used in this opinion: DX = Director's exhibit, CX = claimant's exhibit, EX = employer's exhibit, TR = transcript of hearing, BCR = board certified radiologist, B = B reader.

January 18, 1971 to June 15, 1986. (TR 11) His work took place at a coal preparation plant in Gary, West Virginia. (TR 12) Claimant was a utility and maintenance man. (TR 13) As a utility worker, claimant cleaned up coal spills which required him to shovel coal into a wheelbarrow and push the wheelbarrow. (TR 13) He also checked machinery throughout the plant which occasionally required strenuous work. (TR 14) Claimant also watched the bins which required him to drag hoses, wash the floors, clean up coal spills, and shovel coal off the conveyor belt. (TR 14-16) He also did coal sampling in which he carried up to twelve jars each weighing five to six pounds for a distance of three hundred feet. (TR 18) As a maintenance worker, claimant pulled chains weighing fifty to sixty pounds and installed pipe weighing three hundred to four hundred pounds. (TR 20-21) In addition, he replaced parts of the conveyor belts which required lifting parts weighing over one hundred pounds. (TR 22-23) Claimant's worst exposure to coal dust was from the heat dryers which frequently leaked. (TR 23) He testified that he was also exposed to asbestos from the gaskets around the doors to the heating chambers, the lining of the heating chambers, the insulation around the pipes, and the pump packing. (TR 24-25)

Claimant stated that when the plant shut down in 1986 he was having breathing problems which interfered with his work. (TR 26-27) He began receiving treatment for his pulmonary problems in 1982 in the form of inhalers and breathing medication. (TR 30) He still uses the inhalers. Id. Claimant has been smoking cigarettes for thirty-five years and now smokes less than one pack a day although he once smoked three packs a day. (TR 31) On cross examination, claimant testified that the company told him that the gaskets were made of asbestos, and that the boxes containing the lining in the heating chambers had asbestos written on them. (TR 35)

Medical Evidence

Chest x-rays

<u>Exhibit</u>	<u>Date</u>	<u>Physician</u>	<u>Interpretation</u>
CX 1	12/6/85	DeRamos, B, radiologist ²	1/2, p/t
CX 13	7/21/90	Bassali, BCR, B	2/2, s/t, asbestosis
CX 2	6/4/91	DeRamos, B, radiologist	1/1, p/t
DX 19; CX 3	6/4/91	Subramaniam, BCR	pneumoconiosis with hyperaeration and bullous change which appears to be progressive
DX 20	6/30/92	Hayes, BCR, B	consistent with pneumoconiosis
DX 15	4/14/99	Westerman	1/0, s

² Dr. DeRamos stated that he was a radiologist on his x-ray report, but the record does not indicate that he is a board certified radiologist.

DX 16	4/14/99	Sargent, BCR, B	negative for pneumoconiosis
CX 4	4/14/99	Cappiello, BCR, B	2/1, s/p
<u>Exhibit</u>	<u>Date</u>	<u>Physician</u>	<u>Interpretation</u>
CX 5	4/14/99	Aycoth, B ³	1/2, p/s
CX 6	8/19/99	Subramaniam, BCR,	2/2, p/s
EX 2	2/18/00	Kenny	Emphysematous changes with somewhat interstitial appearance in lung bases
EX 1	2/18/00	Castle, B	negative for pneumoconiosis
EX 3	2/18/00	Abramowitz, BCR, B	0/1, s/t
EX 4	2/18/00	Binns, BCR, B	0/1, s/t
EX 5	2/18/00	Baek, BCR, B	0/1, s/t
EX 6	2/18/00	Gogineni, B ⁴	0/1, s/t
CX 11	4/3/00	Patel, BCR, B	1/1, p/s

Pulmonary Function Studies

<u>Exhibit</u>	<u>Date</u>	<u>Height</u>	<u>Age</u>	<u>FEV1</u>	<u>FVC</u>	<u>MVV</u>
DX 19	4/5/94	70 in.	49	3.42	5.12	----
DX 11	4/14/99	70 in.	54	2.41	4.10	93
EX 2	2/18/00	71 in.	55	2.44	3.56	----
				2.37*	3.87*	----
CX 11	4/3/00	71 in.	55	2.51	4.23	86
				2.44*	4.21*	87*

*post bronchodilator

³ Dr. Aycoth is a radiologist but not a board certified radiologist.

⁴ Dr. Gogineni's curriculum vitae was not offered in evidence, but I take judicial notice that he is on the NIOSH list of approved B readers.

Blood Gas Tests

<u>Exhibit</u>	<u>Date</u>	<u>PCO2</u>	<u>PO2</u>
CX 7	1/18/95	29	72
		28*	62*
DX 13	4/14/99	29.6	70
		30*	70*
CX 11	4/3/00	32	59
		30*	50*
		29*	49*

*exercise values

Medical Reports

Dr. Gary Craft examined the miner on May 3, 1993 in connection with his claim for Social Security disability benefits. (CX 8) Examination of the chest showed a moderately increased AP diameter and there were diminished breath sounds on auscultation. The chest x-ray was classified as 2/2 p. Dr. Craft found that there was chest x-ray and clinical evidence of moderate obstructive lung disease.

Drs. James H. Walker, Thomas Hayes, and Willard Pushkin testified before a West Virginia workers' compensation administrative law judge on April 27, 1994. (DX 20) Dr. Walker and Dr. Pushkin recommended that claimant be awarded a 15% permanent partial disability for occupational pneumoconiosis, and Dr. Hayes stated that claimant's chest x-ray was consistent with occupational pneumoconiosis. Id at pp. 3-5.

Claimant was evaluated by Dr. David Westerman on April 14, 1999. (DX 12) Dr. Westerman noted that claimant had been smoking cigarettes for thirty-five years and now smoked one half pack a day, although he had previously smoked up to three packs a day. Crackles were noted in the pulmonary examination, the chest x-ray indicated diffuse interstitial changes with a fine reticular appearance in both mid-zones and the right upper zone, and the pulmonary function studies revealed mild to moderate airflow obstruction. Dr. Westerman's impressions were obstructive lung disease from a combination of cigarette smoking and occupational lung disease, and diffuse interstitial lung disease almost certainly related to occupational exposure to coal and asbestos. He stated that claimant's respiratory impairment was of moderate severity.

Dr. William R. Kenny examined the miner on February 18, 2000. (EX 2) He recorded that claimant had smoked as much as three packs of cigarettes a day for twenty years and now smoked less than one pack a day. Dr. Kenny noted decreased breath sounds and fine crackles bilaterally in claimant's lungs. The pulmonary function studies showed a reduced vital capacity and moderately

severely reduced FEV1, and the chest x-ray showed a emphysematous changes and interstitial appearance in the lung bases. Dr. Kenny averred that the physical and laboratory findings are compatible with some element of pneumoconiosis such as black lung interposed on significant COPD from smoking, but that it was impossible to make a definite diagnosis without at least a transbronchial biopsy.

Dr. James Castle, reviewed the miner's medical records, including the chest x-ray interpretations of Drs. Abramowitz, Binns, Baek, and Gogineni, and wrote a report dated April 14, 2000. (EX 1) Dr. Castle determined that claimant does not have coal workers' pneumoconiosis. He also concluded that claimant has mild to moderate airway obstruction due to cigarette smoking. Dr. Castle also noted that the blood gas tests showed mild hypoxia due to smoking and that there was no reduction of the pO2 with exercise. He further concluded that claimant has the respiratory capacity to work at a coal preparation plant, and that if claimant is disabled, it resulted from cigarette smoking not coal dust exposure.

The miner was evaluated by Dr. D. L. Rasmussen on April 3, 2000. (CX 11) Dr. Rasmussen noted claimant's occupational and smoking histories and observed fine crackles and wheezing in his examination of the chest. Dr. Patel read claimant's chest x-ray as 1/1, p/s. Ventilatory studies revealed a minimal irreversible obstructive defect and a markedly reduced diffusing capacity, and there was a moderate impairment of oxygen transfer at rest which worsened with exercise. Dr. Rasmussen diagnosed occupational pneumoconiosis. He stated that claimant's respiratory impairment precluded him from resuming his last coal mine job, and he found that cigarette smoking as well as coal dust exposure contributed to claimant's respiratory impairment.

In an April 24, 2000 supplemental report, Dr. Westerman affirmed his finding that claimant's obstructive lung disease is due to cigarette smoking and coal dust exposure, and that his interstitial lung disease is from coal dust and asbestos exposure. (CX 12)

Dr. Darrick S. Leacock of the Tug River Health Association in Gary WV stated in an April 24, 2000 report that claimant had been a patient at Tug River since June 4, 1991 and that his most recent examination was on August 19, 1999. In that examination, claimant's lungs were clear to auscultation and percussion and his chest x-ray was classified as 2/2, q/s. Dr. Leacock reviewed Dr. Westerman's report and agreed with his findings that claimant has COPD and interstitial lung disease caused by smoking and occupational exposure. He also agreed with Dr. Westerman that claimant has a moderately severe pulmonary impairment. Dr. Leacock reviewed the blood gas tests performed by Dr. Westerman and Dr. Daniel and found them to be abnormal. He concluded that the fact that the oxygen levels remained unchanged or decreased during exercise was indicative of a disabling pulmonary condition. Taking into account the duties of claimant's usual coal mine work, Dr. Leacock concluded that claimant is not capable of returning to his previous employment, and he found that coal dust exposure is a significant contributing factor in his total disability.

Dr. Rasmussen penned a supplemental report dated April 25, 2000 after reviewing additional medical evidence. (CX 15) He found that claimant has a marked gas exchange impairment, and that he has a chronic dust disease of the lung arising from his coal mine employment.

Conclusions of Law

Claimant has the burden of proving by a preponderance of the evidence that he has pneumoconiosis which arose out of coal mine employment and that he is totally disabled as a result. *Gee v. W. G. Moore & Sons, Inc.*, 9 BLR 1-4 (1986). The regulations provide four methods for finding the existence of pneumoconiosis: chest x-rays, autopsy or biopsy evidence, the presumptions in §§ 718.304, 718.305, and 718.306, and medical opinions finding that claimant has pneumoconiosis as defined in § 718.201.⁵ See § 718.202(a)(1)-(4). As there is no autopsy or biopsy evidence in this case and claimant is not eligible for the enumerated presumptions, the chest x-rays and medical opinions must be weighed together to determine if the miner has pneumoconiosis. See *Island Creek Coal Company v. Compton*, 211 F. 3d 203 (4th Cir. 2000).

In evaluating the chest x-rays, the qualifications of the x-ray interpreters must be considered. § 718.202(a)(1). Physicians who are both board certified radiologists and B readers have the greatest expertise in assessing the radiographic presence of pneumoconiosis. There are three board certified radiologists/B readers who have found pneumoconiosis by x-ray: Dr. Bassali, Dr. Cappiello, and Dr. Patel, and four board certified radiologists/B readers who have interpreted x-rays as negative for pneumoconiosis: Dr. Sargent, Dr. Abramowitz, Dr. Binns, and Dr. Baek. However, I note that Dr. DeRamos and Dr. Aycoth are B readers and radiologists, and although the record does not indicate that they are board certified radiologists, their opinions are entitled to more weight than the opinions of physicians who are only board certified radiologists or only B readers. A positive reading was also made by Dr. Subramaniam, a board certified radiologist.⁶ Dr. Castle and Dr. Gogineni are B readers only and their negative readings are not entitled to as much weight as physicians who are dually qualified. I give little weight to Dr. Westerman's and Dr. Kenny's readings as they lack any significant qualifications. I conclude that a preponderance of the x-ray evidence is positive for the existence of pneumoconiosis.

⁵ Section 718.201 defines pneumoconiosis as a chronic dust disease of the lung and its sequelae, including respiratory and pulmonary impairments, arising out of coal mine employment.

⁶ Dr. Hayes did not classify the x-ray in accordance with § 718.102 and therefore his interpretation can not be counted as a positive x-ray reading. See § 718.202(a)(1).

Drs. Hayes, Walker, and Pushkin, Dr. Westerman, Dr. Rasmussen, and Dr. Leacock determined that the miner has a pulmonary disease caused by his occupational exposure to coal mine dust.⁷ Dr. Westerman is a board certified pulmonary specialist and provided a well reasoned opinion for his finding that the miner's pulmonary disease arose out of his coal mine employment. Dr. Rasmussen is board certified in internal medicine, has published articles on coal workers' pneumoconiosis, and provided two well reasoned opinions supporting his diagnosis of pneumoconiosis. Dr. Leacock lacks the expertise of Drs. Westerman and Rasmussen, but his opinion was very well reasoned. Dr. Kenny was unable to diagnose pneumoconiosis without a biopsy but did not rule it out either.

Dr. Castle is the only physician who concluded that claimant does not have coal workers' pneumoconiosis. Although he is a board certified pulmonologist, I do not credit his opinion which I find to be cursory and poorly reasoned. Initially, I note that Dr. Castle only reviewed selected parts of the evidentiary record. For example, he only reviewed the negative x-ray readings and did not review the positive x-ray readings. He also apparently only reviewed the blood gas studies performed by Dr. Westerman on April 14, 1999, as he stated that there was no fall of the pO₂ with exercise. In the blood gas tests performed on January 18, 1995 and April 3, 2000, the pO₂ decreased with exercise. Dr. Castle also acknowledged that coal dust exposure as well as cigarette smoking were risk factors for the development of claimant's pulmonary disease, but opted to attribute the disease solely to cigarette smoking. Although he provided a reasonable explanation for finding that the obstruction shown by the ventilatory studies was caused by cigarette smoking, he did not explain how he could determine that the hypoxia indicated by the blood gas studies was caused exclusively by cigarette smoking. His report is not well reasoned. Therefore, I accord less weight to the opinion of Dr. Castle than to the opinions of Drs. Westerman, Rasmussen, and Leacock. After weighing the chest x-ray interpretations and the medical opinions, I conclude that claimant has pneumoconiosis.

Inasmuch as claimant has fifteen years of coal mine employment, he is entitled to the presumption that his pneumoconiosis arose out of coal mine employment. § 718.203(b). The employer has not presented any evidence that claimant's pneumoconiosis was caused by any occupational exposure other than his work at the coal preparation plant, and therefore the presumption has not been rebutted.

The evidence must also show that claimant is disabled from engaging in his usual coal mine work and comparable and gainful work. § 718.204(b). A finding of total disability is based on the criteria found in § 718.204(c) which consist of qualifying pulmonary function studies, qualifying blood

⁷ The findings of Drs. Westerman and Leacock that the miner's lung disease is in part due to asbestos exposure meets the definition of pneumoconiosis in § 718.201 as claimant was exposed to asbestos dust while he was employed in a coal preparation plant. See § 718.201, *Garrett v. Cowin & Co.*, 16 BLR 1-77 (1990)

gas studies, the existence of cor pulmonale with right-sided congestive heart failure, and the reasoned and medically supported opinion of a physician that the miner's pulmonary condition prevents him from performing his usual coal mine work.

Although none of the pulmonary function studies produced qualifying results, all of the blood gas studies have qualifying values except for the resting test done on January 18, 1995. There is no evidence of cor pulmonale. Dr. Rasmussen and Dr. Leacock determined that claimant's pulmonary impairment prevents him from performing his usual coal mine work as a utility and maintenance man. Dr. Craft diagnosed a moderate lung disease and Dr. Westerman stated that claimant has a moderately severe pulmonary impairment. Dr. Kenny did not offer an opinion on disability. Dr. Castle is alone among the physicians in concluding that claimant can perform his usual coal mine work from a pulmonary standpoint. Dr. Rasmussen and Dr. Leacock described the duties of claimant's usual coal mine work in some detail, but Dr. Castle stated only that claimant's last coal mine job was working at a coal preparation plant, and he did not indicate that he was aware of the level of heavy exertion required by that job. In view of Dr. Castle's lack of knowledge regarding the duties of claimant's last coal mine job, his opinion on whether the miner can perform that job is not entitled to any weight. *See Walker v. Director, OWCP, U. S. Dept. of Labor*, 927 F. 2d 181 (4th Cir. 1991). Dr. Castle also acknowledged that the blood gas studies "fall within the limit of federal disability levels" but did not satisfactorily explain why they are not indicative of total disability. Upon consideration of all the evidence, I find that the miner is totally disabled.

As this case arises in the Fourth Circuit, the evidence must establish that pneumoconiosis was at least a contributing cause of his total disability. *Hobbs v. Clinchfield Coal Co.*, 917 F. 2d 790, 792 (4th Cir. 1990). Dr. Westerman, Dr. Rasmussen and Dr. Leacock concluded that the miner's occupational exposure to coal mine dust contributed to his totally disabling pulmonary impairment. Dr. Castle attributed claimant's pulmonary impairment solely to cigarette smoking, but for the reasons previously set forth, I give little weight to his opinion. I find that claimant is totally disabled due to pneumoconiosis.

Benefits are awarded to miners beginning with the month of onset of total disability. § 725.503(b). The earliest indication of total pulmonary disability in the record is the exercise blood gas study of January 18, 1995. Therefore, benefits will be awarded as of January 1, 1995. Claimant's counsel has thirty days to file a fully supported fee application and his attention is directed to §§ 725.365 and 725.366. Employer's counsel has twenty days to respond with objections.

ORDER

IT IS ORDERED THAT the U. S. Steel Mining Company:

- (1) pay claimant all the benefits to which he is entitled, augmented by one dependent, beginning as of January 1, 1995,
- (2) pay claimant all the medical benefits to which he is entitled beginning as of January 1, 1995,
- (3) reimburse the Black Lung Disability Trust Fund for interim payments made to claimant, and
- (4) pay interest to the Black Lung Disability Trust Fund from the date thirty days after the initial determination of eligibility at the rates set forth in § 725.608.

DANIEL L. LELAND
Administrative Law Judge

DLL/lab

NOTICE OF APPEAL RIGHTS. Pursuant to 20 C.F.R. Section 725.481, any party dissatisfied with this Decision and Order may appeal it to the Benefits Review Board within 30 days from the date of this Decision and Order, by filing a notice of appeal with the ***Benefits Review Board at P.O. Box 37601, Washington, DC 22013-7601***. A copy of a notice of appeal must also be served on Donald S. Shire, Esq. Associate Solicitor for Black Lung Benefits. His address is Frances Perkins Building, Room N-2117, 200 Constitution Avenue, NW, Washington, D.C. 20210